

IN THE IOWA DISTRICT COURT FOR ADAMS COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

ENVIRONMENTAL RECYCLING
CO., INC., DWIGHT L. OGLESBEE, and
KATHRYN A. OGLESBEE,

Defendants.

LAW NO. CVCV015693

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources
(hereafter "DNR"), and for its claim against Defendants Environmental Recycling Co., Inc.,
Dwight L. Oglesbee, and Kathryn A. Oglesbee states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants Environmental Recycling Co., Inc., Dwight L. Oglesbee, and Kathryn A. Oglesbee arising from violations of Iowa solid waste, hazardous waste, and air quality laws on properties located within the City of Brooks in Adams County, Iowa. The violations involve illegal disposal and open burning of solid waste, including, but not limited to, plastic containers, asphalt shingles, scrap lumber and waste tires; failure to notify the DNR of a hazardous condition; and illegal land disposal of hazardous waste, including but not limited to waste oil, lead, benzene, ethylbenzene, toluene, and xylene.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant Environmental Recycling Co., Inc. is an Iowa corporation and the owner of real property located in the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Seven (7), Township Seventy-one (71) North, Range Thirty-four (34) West of the 5th P.M., Adams County, Iowa.
5. Defendant Dwight L. Oglesbee is a resident of Cass County, Iowa, and the president of Defendant Environmental Recycling Co., Inc.
6. Defendant Kathryn A. Oglesbee is a resident of Cass County, Iowa, and the secretary and treasurer of Defendant Environmental Recycling Co., Inc.
7. Defendants Dwight L. Oglesbee and Kathryn A. Oglesbee personally participate in, control, and direct the operations of Defendant Environmental Recycling Co., Inc.

Jurisdiction

Solid Waste Regulations

8. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.
9. Under Iowa Code section 455B.304, the Environmental Protection Commission ("EPC") of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste.

Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

10. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation, of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty for each day of violation not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation.

Air Quality Regulations

11. Under Iowa Code section 455B.133(2), the Environmental Protection Commission of the DNR is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20-30 concerning air quality.

12. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

13. Under Iowa Code section 455B.146, the Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty

for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties.

Hazardous Conditions Regulations

14. The DNR is the agency of the state responsible for the prevention, abatement, and control of hazardous conditions. Iowa Code § 455B.382.

15. “‘Hazardous condition’ means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment.” Iowa Code § 455B.381(4); 567 Iowa Admin. Code 131.1.

16. “‘Hazardous substance’ means any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means.” Iowa Code § 455B.381(5); 567 Iowa Admin. Code 131.1. “‘Hazardous substance’ may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.” Iowa Code § 455B.381(5); 567 Iowa Admin. Code 131.1.

17. The DNR is authorized to establish such rules as are necessary to protect the public from unnecessary exposure to hazardous substances, and to develop comprehensive plans for the prevention, abatement and control of hazardous conditions within the state. Iowa Code §§ 455B.383(1), (2).

18. Any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the DNR and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition. Iowa Code § 455B.386; 567 Iowa Admin. Code 131.2.

19. When any hazardous condition exists, the DNR director may remove or provide for the removal and disposal of the hazardous substance at any time, unless the director determines such removal will be properly and promptly accomplished by the owner or operator of the vessel, vehicle, container, pipeline or other facility. Iowa Code § 455B.387.

20. The Attorney General shall, at the request of the DNR, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to obtain compliance with the provisions of part 4 of division IV of Iowa Code chapter 455B. Iowa Code § 455B.391.

Land Disposal of Hazardous Waste Regulations

21. A generator, recycler, transporter or other handler of hazardous waste shall not dispose of the wastes by land disposal or store wastes at an aboveground storage facility unless all of the following conditions exist: a) the EPC determines that the best available technology is being used at the land disposal facility; b) the handler proves to the satisfaction of the EPC that

there is no available alternative including aboveground storage for the disposal of hazardous waste; c) the handler utilizes methods of source reduction, recycling and destruction of hazardous waste to the extent feasible, as determined by rule; and, d) the handler pretreats the hazardous waste as determined by rule. Iowa Code § 455B.462(1).

22. "Hazardous waste" means a waste or combination of wastes that because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics has either of the following effects: 1) causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or, 2) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Iowa Code §§ 455B.461(1), 455B.411(3)"a". "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives. Iowa Code §§ 455B.461(1), 455B.411(3)"a"(2).

23. A person who violates a provision of part 7 of division IV of Iowa Code chapter 455B is subject to a civil penalty of not more than Ten Thousand Dollars for each violation and for each day of continuing violation. Iowa Code § 455B.466.

Facts

24. Between May, 1992, and August, 1994, DNR officials received several complaints of open dumping and open burning of solid waste on the property described in paragraph 4. In response, DNR officials issued Defendant Environmental Recycling Co., Inc. three separate Notices of Violation, on July 14, 1992, July 28, 1993, and August 10, 1994, respectively. The Notice of Violation issued to Defendant Environmental Recycling Co., Inc. on August 10, 1994,

informed it that burial of solid waste materials at any location other than an approved sanitary disposal project was prohibited.

25. On March 23, 2006, DNR officials received a complaint alleging improper disposal and open burning of solid waste materials by Defendant Environmental Recycling Co., Inc. on the property described in paragraph 4. The complaint alleged that there were 55-gallon drums dumped on Defendant Environmental Recycling Co., Inc.'s property that were leaking. The complaint further alleged that solid waste, including pesticide jugs, tires, and batteries had been dumped and burned at the site. The complaint was based on a Phase 1 environmental assessment conducted by Team Services in regard to a neighboring property. A monitoring well on the neighboring property found elevated levels of arsenic, barium, cadmium, total chromium, and lead in the groundwater.

26. On May 5, 2006, DNR officials inspected the property described in paragraph 4 and documented violations of open burning and solid waste regulations. In addition, solid waste materials were documented to have been buried on-site. In response, DNR officials issued a Notice of Violation to defendant on May 17, 2006.

27. On June 15, 2006, Defendant Dwight Oglesbee contacted DNR officials and acknowledged non-compliance with DNR regulations and stated that Defendant Environmental Recycling Co., Inc. would submit a compliance plan as soon as possible. DNR officials received a proposed compliance plan from Defendant Environmental Recycling Co., Inc. on June 16, 2006, but the plan contained no specific timeline or other details for cleanup or avoidance of future violations. In response, DNR officials sent Defendant Environmental Recycling Co., Inc.

a letter on June 28, 2006, denying the compliance plan and requiring a more detailed plan and timelier cleanup of the site.

28. On July 17, 2006, DNR officials inspected the property described in paragraph 4 and observed evidence of continued open burning and buried drums containing chemicals. One of the buried drums was observed to be damaged and leaking its contents into the ground surface. In addition, an obvious oil spill was observed near a building on the property. Laboratory samples and photographs were taken during the inspection, and a witness was interviewed who stated that he had personally observed employees of Defendant Environmental Recycling Co., Inc. burning solid waste and using equipment to maintain an illegal fire. The results of the laboratory tests subsequently revealed that the drums were leaking hazardous wastes containing waste oil, lead, benzene, ethylbenzene, toluene, and xylene. Defendants never notified the DNR and the local police department or Adams County Sheriff's Office of the oil spill or leaking drums.

29. On July 18, 2006, DNR officials received a complaint alleging that Defendant Environmental Recycling Co., Inc. was burning solid waste on the property described in paragraph 4. In response, DNR officials inspected the property on July 21, 2006, and documented that more burning of solid waste materials had occurred since their July 17, 2006 inspection.

30. On January 11, 2007, DNR officials inspected the property described in paragraph 4 and observed evidence of continued open burning of solid waste materials as well as evidence of what appeared to be continued burial of solid waste.

Violations

31. Defendants have violated Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 by dumping or depositing or permitting the dumping or depositing of solid waste on the property described in paragraph 4, and by failing to remove and properly dispose of solid waste from the property described in paragraph 4.

32. Defendants have violated 567 Iowa Admin. Code 23.2(1) by allowing, causing, or permitting open burning of combustible materials on the property described in paragraph 4, despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

33. Defendants have violated Iowa Code section 455B.386 by failing to notify the department and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition, or discovery of the hazardous condition, observed by DNR officials on July 17, 2006.

34. Defendants have violated Iowa Code section 455B.462 by land disposing of hazardous wastes and/or by storing wastes at an aboveground storage facility, despite the fact that: a) the EPC has not determined that the best available technology is being used at defendants' land disposal facility; b) defendants have failed to prove to the satisfaction of the EPC that there is no available alternative including aboveground storage for the disposal of hazardous waste; c) defendants have failed to utilize methods of source reduction, recycling and destruction of hazardous waste to the extent feasible, as determined by rule; and, d) defendants have failed to pretreat the hazardous waste as determined by rule.

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1);
- b. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4;
- c. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.386 for each day of violation of Iowa Code section 455B.386 and 567 Iowa Admin. Code 131.2;
- d. assess civil penalties against defendants not to exceed the statutory maximum pursuant to Iowa Code section 455B.466 for each day of violation of Iowa Code section 455B.462;
- e. issue a permanent injunction pursuant to Iowa Code section 455B.146 enjoining defendants from further violations of the provisions of 567 Iowa Admin. Code 23.2(1);
- f. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining defendants from further violations of the provisions of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4;
- g. issue an injunction pursuant to Iowa Code section 455B.391 enjoining defendants to undertake an investigation to determine the extent of contamination at their facility and thereafter perform any required cleanup of soils and groundwater deemed necessary by the DNR;
- h. issue a permanent injunction pursuant to Iowa Code section 455B.391 enjoining defendants from further violations of the provisions of Iowa Code section 455B.386 and 567 Iowa Admin. Code 131.2; and,
- i. issue an injunction enjoining defendants from further violations of the provisions of Iowa Code section 455B.462.

Plaintiff further requests that the Court tax the costs of this action to defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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